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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,573	12/31/2001	Robert L. Popp	KCC 4770 (K.C. NO. 17,310	4042
321	7590	05/10/2004	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 05/10/2004

124

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,573

Applicant(s)

POPP ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2003 and 05 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5,8,9,11,14,16,17,20,21 and 28-39 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,5,8,11,14,16,17,20,21,38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3,9 and 28-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the Group I claims, the species of inelastic material stabilizer, the species of force application without substantial necking or gathering and the species of machine direction orientation in Paper No. 6 is acknowledged.

2. Claims 2, 4-5, 8, 11, 14, 16-17, 20-21, as well as now claims 38-39, are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

Contrary to Applicant's remarks in the remarks of 3-5-04 and 12-19-03, claims 38 -39 do not read on the elected species because the elected species has a stabilizing nonelastic backing and Figure 5 does not show a material free from a backing substrate, i.e. note the two sides of the side panel are depicted differently. Furthermore, an attached side edge of the article if it backs at least a portion of the nonwoven material would be encompassed by the claim language as interpreted according to its usual meaning in light of the specification, i.e. no specific definition provided.

Specification

3. It is noted that the amendments to claims 3 and 9 and the amendments to page 5, after line 24 and the abstract did not comply with 37 CFR 1.121 in that such did not underline all the language added nor strike through all the language deleted. The Examiner has made the

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necessary red ink changes to bring these amendments into compliance. Any further response should comply with 37 CFR 1.121 effective 7-30-03.

Drawings

4. The drawings were received on 12-19-03. These drawings are not accepted by the Examiner. Figures 8 and 9 do not show the oriented web material as claimed and as set forth in the portions of the specification cited as support by Applicant, as best understood, see discussion *infra*. Furthermore, as set forth in MPEP 608.02 photographs are not ordinarily permitted unless they are the only practicable medium for illustrating the claimed invention. The examiner believes such may be illustrated by drawing and Applicant has not provided any argument to the contrary. Furthermore, the Examiner believes that the securement of the nonwoven web to the substrate is a structural feature that must be shown in the drawings to achieve an understanding of the invention, again see discussion *infra*.

5. The drawings are objected to because in Figure 2, upper left hand corner, there should be a line from 66 to the structure it denotes. Where are Figures 8 and 9? A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claims 3, 9 and 28-37, as best understood, see discussion *infra*, e.g. oriented nonwoven loop material, the web being in the extended position on the substrate, the web being in a relaxed configuration, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

7. The disclosure is objected to because of the following informalities: in Figure 3, what is 78? In the claims, the description, e.g. the Summary of the Invention section, page 6, lines 25-27, page 9, lines 16-18, the paragraph bridging pages 23-24, lines 1-6 thereof, the amendment to page 27, line 8, lines 1-25, and page 29, line 29-page 31, line 2, and the abstract, it is described that the first fastening component is an oriented nonwoven loop material comprising an extensible oriented nonwoven web. As defined "oriented material" refers to a material or web in which mechanical drawing of the material has resulted in alignment of the fibers constituting the material, i.e. all the fibers, in a direction generally parallel to the direction of the applied force (it is noted that "generally" has been interpreted by the courts as not allowing negation of the term it modifies or, in other words, "generally parallel" allows for irregular deviations from perfectly parallel but does not broaden "parallel" to encompass non parallel, see *Arvin Industries v. Berns Air King Corp.*, 525 F.2d 182, and "draw" is given its usual meaning since such has not been specifically defined and is defined by the dictionary as "to cause to move after or toward one by applying continuous force, pull, drag", i.e. stretch). As set forth "extensible" is the capability to stretch or be elongated in at least one direction, but which may not have sufficient recovery to be considered elastic. Yet also in the claims, the description as now amended at page 27, line 8, lines 26-28 and the abstract, it is described that the web is extensible from a relaxed

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configuration to an extended configuration wherein in the extended configuration a greater number of fibers of the nonwoven web are oriented in the direction in which the web is extended than in the relaxed configuration and the web being in its extended configuration on the substrate. Since this description only requires the majority of the fibers to be aligned in a direction rather than all the fibers be aligned generally parallel in a direction, at best the descriptions appear to be inconsistent. Furthermore, it is noted that Applicant did not set forth where support for the latter description was provided by the specification as originally filed. Furthermore, it is unclear whether the amendments are directed to a description of the process of drawing to arrive at the oriented nonwoven material and web or whether they recite structure of the loop material in addition to that already cited. If the former, such would appear to be redundant with the definition provided of "extensible" and "oriented material". If the latter, it is unclear exactly what is being described? A drawn material with the fibers aligned generally parallel, i.e. the relaxed configuration?, which is further extended in some direction to an extended configuration in which more of the fibers are oriented in that direction than in the relaxed configuration? Is the web in its extended configuration all the time on the substrate to which it is secured? Just when it is secured? A clear, consistent description of the nonwoven loop material and nonwoven web should be set forth, e.g. how is the web made? What is its structure of the web after manufacture but before securement to the substrate? How is it secured? What is web's structure upon securement to the substrate? What is the structure of the loop material after manufacture, i.e. what is the end product?

Appropriate correction is required.

Claim Objections

8. Claims 33-37 are objected to because of the following informalities: in claim 33, line 3, "the wearer" should be --a wearer-- and on line 13, "a wearer" should be --the wearer--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. Claims 3, 9 and 28-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 30, a dependent claim, it is unclear whether a subcombination of a mechanical fastening system, i.e. "The mechanical fastening system" in the claim preamble, or a combination of the mechanical system and an article, i.e. the claim body, e.g., "in combination with...article". Also note the preamble of claim 28. Is Applicant claiming two articles in claim 35 or just one? In regard to claims 28 and 33, and thereby the claims dependent therefrom, and as discussed supra, the description of the first fastening component is unclear, e.g. what number of fibers at a minimum are required to be oriented in a specific manner and what is the manner required and at what time does such orientation exist?

Claim Language Interpretation

10. Due to the lack of clarity discussed supra and as best understood, the first fastening component will be considered an oriented nonwoven loop material secured to a substrate which comprises an extensible, nonwoven web of fibers with "oriented material" and "extensible"

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being defined as set forth on pages 6 and 9, respectively, “generally parallel” and “drawing” being defined as set forth supra and considering MPEP 2113, i.e. the patentability of a product by process is based on the product itself not the method of production (Therefore if the end product in the product by process is the same as or obvious from a product of the prior art, the product does not distinguish over the prior art even though the prior product was made by a different process), or in other words, the first fastening component is a nonwoven loop material comprising a nonwoven web of fibers having pulled or stretched generally parallel fibers (i.e. the resultant web produced from a nonwoven web of fibers capable of stretch or elongation in at least one direction but which may not have sufficient recovery to be considered elastic which was been mechanically drawn, i.e. pulled or stretched, so that the fibers of the web are aligned generally parallel in the direction of draw) which nonwoven web of pulled or stretched generally parallel fibers is attached to a substrate. In claims 29 and 34, “generally free...gathering” is interpreted as allowing for irregular deviations from “free from substantial necking or gathering” but does not broaden such to encompass substantial necking or gathering. Claim 30 due to the lack of clarity discussed supra is interpreted as claiming a substrate which is capable of integral formation with an article. Claim 34 due to the lack of clarity discussed supra is interpreted to claim the substrate integrally with just the one article.

Claim Rejections - 35 USC § 102/103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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11. Claims 3, 9, 28-37 are rejected under 35 U.S.C. 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as obvious over Procter & Gamble, EP '198.

Claim 28: See Figures 1-3, 10, col. 3, lines 4-18, col. 4, lines 4-14 and 26-45, col. 5, lines 4-21 and 45-53, col. 6, lines 2-6, and 14-39 ("tension" according to its usual definition, i.e. '198 does not specifically define such, is "the act or process of stretching", "a force tending to stretch or elongate something", and "may" infers "may not" also), col. 8, lines 14-15, col. 9, lines 10-17 and lines 21-42, col. 13, lines 25-30, col. 14, lines 30-36 and col. 15, lines 29-41, i.e. the mechanical fastening system is 50 and has a first fastening component 20 of oriented nonwoven loop material 30 attached to a substrate, e.g., 22 and a second fastening component 52 of hook material. The fastening components are refastenable. The oriented nonwoven loop material can be a nonwoven web of fibers having generally parallel, tensioned, i.e. stretched, i.e. capable of stretch, i.e. of "extensible" material, fibers. This claim as interpreted includes a product by process. The patentability of such claim is based on the product itself not the method of production. Therefore if the end product in the product by process claim is the same as or obvious from a product of the prior art, the claim does not distinguish over the prior art even though the prior product was made by a different process. See MPEP 2113. Also see the Claim Language Interpretation section *supra*. The end product, as best understood, is the same as or obvious from the product of '198, see cited portions *supra*. Claim 3: see Figure 1, col. 5, lines 4-21, i.e. at least one axis, i.e. axes are MD and CD and col. 6, lines 2-5. Claim 9: see col. 8, lines 30-31. Claim 29: see portions cited *supra*, i.e. fibers are essentially parallel and can be tensioned without dislocation, disarrangement, skewing, etc., i.e. the nonwoven web is free from substantial necking and gathering. It is noted that the claim does not set forth when such

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freedom exists, i.e. before attachment, after attachment, before drawing, etc. Claim 30: it is noted that “integrally” does not require monolithic formation. See col. 14, line 50-col. 15, line 4. Claims 31-32: see col. 12, last line-col. 13, line 3. It is noted that the claim does not require direct attachment to the inelastic substrate. Claims 33-37: see discussion of claims 3, 9 and 28-32 and col. 14, line 50-col. 15, line 4.

13. Claims 3, 9 and 28-37 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Procter & Gamble PCT ‘893.

Claim 28: See Figures 1-8, page 4, lines 12 et seq, page 6, lines 4-7, page 7, lines 9-10, 13-15 and 21-23, page 8, lines 1-19, page 12, line 9, page 13, lines 1-3, page 15, lines 13 et seq, (“tension” according to its usual definition, i.e. ‘893 does not specifically define such, is “the act or process of stretching”, “a force tending to stretch or elongate something”, and “may” infers “may not” also), i.e. the mechanical fastening system is 20 and has a first fastening component 22 of oriented nonwoven loop material 30 attached to a substrate, e.g., 34 and a second fastening component 24 of hook material 28. The fastening components are refastenable. This claim as interpreted includes a product by process. The patentability of such claim is based on the product itself not the method of production. Therefore if the end product in the product by process claim is the same as or obvious from a product of the prior art, the claim does not distinguish over the prior art even though the prior product was made by a different process. See MPEP 2113. Also see the Claim Language Interpretation section supra. The end product, as best understood, is the same as or obvious from the product of ‘893, see cited portions supra. Claim 3: see page 8, lines 1-7, page 15, lines 23 et seq, and page 19, lines 9-15. Therefore since the ‘893 device can include filaments 36 positioned in any direction, which includes a machine

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direction of the web, the '893 device is considered to meet the language of the claims. Claim 9: see page 13, lines 1-3. Claim 29: see portions cited supra, i.e. fibers are essentially parallel and can be tensioned without dislocation, disarrangement, skewing, etc., i.e. the nonwoven web is free from substantial necking and gathering. It is noted that the claim does not set forth when such freedom exists, i.e. before attachment, after attachment, before drawing, etc. Claim 30: it is noted that "integrally" does not require monolithic formation. See page 18, lines 28-33. Claims 31-32: see page 10, lines 7-10 and page 26, lines 24-26, i.e. the second lamina 80 is inelastic and if attached to composite 90 when it is completely relaxed, the composite 90 is inelastic. It is noted that the claim does not require direct attachment to the inelastic substrate. Claims 33-37: see discussion of claims 3, 9 and 28-32 and page 18, lines 28-33.

Response to Arguments

14. Applicants remarks with regard to form and claims 38-39 have been considered but are either deemed moot in that the issue has not been reraised or is deemed not persuasive for the reasons already set forth supra. With regard to the remarks with regard to claims 3, 9 and 28-37 with respect to Noel and Weirich, such remarks have been considered but are deemed not persuasive in that they are narrower than the claim language as best understood, discussed supra, and the teachings of the prior art which both teach the property of extensibility and tensioning of the nonwoven web.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. It is noted that the cited references teach nonwoven webs of fibers having some alignment due to drawing or necking.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

New claims 28-39 as well as the amendments to claims 3 and 9 and the specification necessitated any new grounds of rejection.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
May 5, 2004